

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CARLOS RIVERA,

Plaintiff,

- v -

Civ. No. 9:10-CV-1369
(TJM/RFT)

MARK D. KINDERMAN, *Acting Superintendent, Marcy
Correctional Facility,*

Defendant.

APPEARANCES:

OF COUNSEL:

CARLOS RIVERA
Plaintiff, *Pro Se*
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New York, NY 10035

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
Attorney for Defendant
The Capitol
Albany, NY 12224

DOUGLAS J. GOGLIA, ESQ.
Assistant Attorney General

RANDOLPH F. TREECE
United States Magistrate Judge

REPORT-RECOMMENDATION and ORDER

On June 11, 2012, this Court issued an Order to Show Cause (Dkt. No. 22) in response to Defendant's Motion for Sanctions, pursuant to Federal Rule of Civil Procedure 37(d) (Dkt. No. 20). Pursuant to that Order, Plaintiff Rivera was directed to provide the Court with cause, in writing and within thirty days (30) of the filing date of the Order, why this Court should not recommend dismissal of the instant case.

Plaintiff has failed to respond to the Order, despite the Court's warning that Plaintiff may

face dismissal of his action. Therefore, for the reasons detailed in the Order to Show Cause, which we incorporate into this Report-Recommendation and Order, we recommend that Defendant's Motion for Sanctions be **granted** and that Plaintiff's action be **dismissed** in its entirety.

For the reasons stated herein, it is hereby

RECOMMENDED, that Defendant's Motion for Sanctions, pursuant to Federal Rule of Civil Procedure 37(d) (Dkt. No. 20), be **granted**; and it is further

RECOMMENDED, that Plaintiff's Amended Complaint (Dkt. No. 5) be **dismissed** in its entirety, for the reasons stated in this Court's Order to Show Cause (Dkt. No. 22); and it is further

ORDERED, that the Clerk of the Court forward a copy of this Report-Recommendation and Order, and the Court's Order to Show Cause (Dkt. No. 22), to the District Court for their consideration; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Report-Recommendation and Order upon the parties to this action.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have fourteen (14) days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN (14) DAYS WILL

PRECLUDE APPELLATE REVIEW. *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993) (citing *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989)); *see also* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72 & 6(a).

Date: July 16, 2012
Albany, New York



Randolph F. Treece
U.S. Magistrate Judge

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